IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2333 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAMIRKUMAR JOHNBHAI PARMAR
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR BIPIN P JASANI for Petitioner No(s).: 1.
MR DA DESAI,. AGP for Respondent Nos.1, 2 and 3.
NOTICE SERVED BY DS for Respondent No(s).: 4.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 26/08/2005

ORAL JUDGMENT

By filing this petition, the petitioner has prayed that appropriate direction may be given by quashing and setting aside the impugned action of respondent No.3 – District Education Officer for withholding the regular monthly salary of the petitioner as Assistant Teacher in the pay scale of Rs.5500-9000 with effect from 15.07.1999.

For non-approval of his appointment by the D.E.O., the petitioner had approached the Tribunal by Application Nos.48 of 2000 and 37 of 2001 and the tribunal by its orders dated 11.08.2000 and 24.06.2002, allowed the said applications and the District Education Officer was directed to decide the question of appointment of the petitioner within a period of 30 days and the school was directed to pay regular salary to the petitioner till approval was granted. It was also directed that the payable salary would be subject to the grant of the department.

Both the abovesaid orders were challenged by the respondent Nos.2 and 3 by filing Special Civil Application No.3427 of 2003 before this Court. This Court rejected that Special Civil Application by observing that the judgment given by the tribunal may not be considered as a precedent so far as other cases are concerned. In a given case, the Tribunal will have to decide about its jurisdiction. This Court had also considered the arguments of learned Assistant Government Pleader that now appointment can be given only in a fixed scale. This Court, therefore, observed that in future cases, the tribunal may consider this aspect in accordance with law.

So far as present petitioner is concerned, this Court had not interfered with the order of the tribunal and petition filed by the State Government was rejected. However, it seems that the District Education Officer was of the opinion that the as per the judgment of this Court, the

petitioner is required to be given appointment only in a fixed scale.

Learned Assistant Government Pleader, Mr.D.A.Desai submitted that the District Education Officer had give the said opinion in view of the opinion given by the than learned Assistant Government Pleader. However, Mr.Desai submitted that this Court has not said anything to the effect that the present petitioner should be given fixed salary as the said observation was made regarding future appointments. Since this Court rejected the petition, the Government is now required to implement the order of the tribunal. This Court had not said that the petitioner is required to be given fixed salary. If as per the order of the tribunal, the petitioner is entitled to get regular salary and not the fixed salary, the department is required to take fresh decision in connection with the appropriate pay scale of the petitioner.

District Education Officer shall pass

appropriate order in connection with regularizing the salary of the petitioner on the basis of the recommendation / proposal received from the school authority and thereafter, may pass appropriate order in accordance with law as per the order of the tribunal. Whatever amount is required to be paid to the petitioner, the same shall be paid under the Direct Payment Scheme as required under the order of the tribunal as early as possible and preferably within a period of two months from today.

The petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

(P.B.MAJMUDAR, J.)

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